

SPECIAL TOWN COUNCIL MEETING

MILTON, DELAWARE

TOWN COUNCIL MEETING)
)
MAY 17, 2007)

BEFORE:

MAYOR DON POST
COUNCILWOMAN LEAH BETTS,
COUNCILWOMAN RONDA MELSON ABRAHAM,
COUNCILMAN NOBLE PRETTYMAN,
COUNCILMAN JOHN FREY,
COUNCILWOMAN MARY HUDSON,
COUNCILMAN ED HARRIS

ALSO PRESENT:

DOUGLAS MARSHALL, ESQUIRE,
Key Ventures LLC

ANTHONY REPORTING
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1 MAYOR POST: I want to call to order at
2 7:30 p.m., Thursday, May 17, 2007, the special council
3 meeting. And we will begin with a moment of silence led
4 by Councilwoman Betts.

5 COUNCILWOMAN BETTS: Could you all please
6 stand?

7 (Following a moment of silence:)

8 COUNCILWOMAN BETTS: Amen.

9 COUNCILWOMAN HUDSON: Amen.

10 MAYOR POST: Continue to stand for the
11 Pledge of Allegiance.

12 (Following the Pledge of Allegiance:)

13 MAYOR POST: Roll call vote. Roll call
14 vote. Councilman --

15 COUNCILMAN PRETTYMAN: Prettyman.

16 MAYOR POST: -- Prettyman. Out loud, here?

17 COUNCILWOMAN BETTS: Are you here?

18 COUNCILMAN PRETTYMAN: Yes.

19 MAYOR POST: Yes. Okay. Councilwoman
20 Melson.

21 COUNCILWOMAN HUDSON: Here.

22 COUNCILWOMAN MELSON ABRAHAM: Oh, here.

23 MAYOR POST: Councilwoman Betts.

24 COUNCILWOMAN BETTS: Present.

1 MAYOR POST: Oh, you are right.
2 Councilwoman Abraham, I'm sorry. Councilman Frey.
3 COUNCILMAN FREY: Present.
4 MAYOR POST: Councilman Harris.
5 COUNCILMAN HARRIS: Present.
6 MAYOR POST: Councilwoman Hudson.
7 COUNCILWOMAN HUDSON: Present.
8 MAYOR POST: And myself as Mayor, present.
9 And on the agenda -- Well, wait. Additions? Any
10 additions or corrections to the agenda? Okay. I have a
11 motion to approve the agenda as presented.
12 COUNCILMAN PRETTYMAN: Wait, excuse me. I'm
13 sorry.
14 MAYOR POST: Sure.
15 COUNCILMAN PRETTYMAN: They're all talking.
16 I would like to table the Annexation of Key Ventures
17 this evening because of the lack of getting the
18 information to us on a timely manner.
19 Last evening I received something that was
20 faxed to our town office at 1:30, I got late last
21 evening, because I was out at the hospital. But today I
22 received another agreement, Annexation Agreement this
23 afternoon. It has not given -- I don't think it has
24 given us the ample time to go over it and compare the

1 changes in the two.

2 I would like to see that Mr. Marshall could
3 get this to us at least within a week time, if he's
4 making changes or something, so that we can go over
5 them. I have gone through the one last night to find
6 out this afternoon I received another one. And I just
7 did not -- I don't think that we as Council have had
8 time to go through this to see the changes and what is
9 going on. And I would like to table this this evening.

10 COUNCILWOMAN HUDSON: Can I present a
11 motion?

12 COUNCILWOMAN BETTS: Can I speak to that?

13 MAYOR POST: No, no, not yet.

14 COUNCILWOMAN BETTS: No? Okay.

15 MAYOR POST: Not yet.

16 COUNCILWOMAN BETTS: Okay.

17 MAYOR POST: We have a motion to table.

18 COUNCILWOMAN HUDSON: I second.

19 MAYOR POST: Okay. We have a motion and a
20 second. Any discussion?

21 COUNCILWOMAN BETTS: Yes, I have a
22 discussion. And Noble, it's probably my fault that it
23 was done again this afternoon. I was reading it, and I
24 saw that there needed to be a word change. And I had

1 Mr. Dickerson call Mr. Marshall. And when you come to
2 it, I'll tell you what it was.

3 MAYOR POST: And I do also want to say that
4 all changes can be addressed, and there was only a few.
5 But the changes made from the one document from
6 yesterday was reviewed by our legal counsel and signed,
7 approved by our legal counsel to move forward. And
8 also, I would be glad to have Mr. Marshall highlight
9 those items that were changed from the document prior.

10 COUNCILMAN PRETTYMAN: Well, Mr. Mayor --

11 COUNCILWOMAN BETTS: They were just minor.

12 MAYOR POST: -- I wish you had done that at
13 the time of changing this. We are living in a very high
14 tech time now where our computers can highlight things
15 in red or blue to make the changes. I still have to go
16 through it to know all the changes necessary. I still
17 feel we do not have this in a timely fashion -- even
18 getting it yesterday -- in a timely fashion to be able
19 to address this.

20 And this is a major, a very major thing.
21 And you have said this several times, because it's a
22 major thing that we're -- issue that we're upon us. And
23 I feel to be just to the Key Venture people, to the
24 residents, that we should table this for -- until we

1 have had it in ample time to go through it completely,
2 because getting it yesterday and even though the changes
3 that was made today or last night, whatever, still, it
4 is still not ample time for us to be able to review and
5 go over it and be able to make the decision that is best
6 for the community.

7 COUNCILWOMAN HUDSON: Mr. Mayor, may I have
8 the floor?

9 MAYOR POST: Sure.

10 COUNCILWOMAN HUDSON: Okay. May 7th I
11 received one copy to be reviewed. And last night at
12 8:00 I received another copy to be reviewed. Today at
13 5:00 in my mailbox I have another copy to be reviewed.

14 And I would just like to read the comments
15 that are on the front. Please deliver to all members of
16 the Town Council and the Town Manager, the Mayor, town
17 attorney. This is underlined. This is to be read in
18 full. I have made changes, RE sewer rate requested by
19 the Vice Mayor and have cleaned the document as I
20 discussed. Some of the timing of impact fee payments
21 have been adjusted.

22 To read through and compare one document to
23 another to another, not only three in ten days, but also
24 last night, spend my time in going over this, it's not

1 just page by page, but line by line and word by word,
2 and then today being expected to compare this one to
3 this one, page by page, line by line, and word by word,
4 because the simple change of one word here and there can
5 make a huge difference in this.

6 I, for one, would like to move forward, as
7 the Mayor said, aggressively, with the sewer system.
8 These two things are tied together. But the problem is
9 I think we need to look at these documents very, very
10 carefully. I don't think the need to rush, if we just
11 wait two more weeks, table it until the next meeting is
12 unreasonable.

13 This is millions of dollars in money, like
14 the other -- Mr. Nobleman said -- Mr. Noble Prettyman
15 said, this is -- it's going to have a great impact on
16 this town, as well as the developer.

17 And personally, I would like to move ahead.
18 But this is an impossible situation, to be asked to
19 review a copy last night and then to review another one
20 today. When I get it at 5:00 and then I come home and I
21 eat dinner -- I have to cook dinner, eat dinner, walk
22 the dog -- there is not time to review it. And I think
23 that we should all have sufficient time to review it.
24 Thank you.

1 MAYOR POST: All right. And I would like to
2 comment, for one thing, Councilman Prettyman, because
3 you would be aware of this. In past, with the
4 annexation agreements, I know for the few I have faced,
5 I have received them the night of the meeting and then
6 they were voted on within an hour later, didn't even get
7 a chance to review them.

8 This is -- What we're talking about -- and
9 this would be for both Councilwoman Hudson and
10 Councilman Prettyman -- you had the document yesterday.
11 I don't think it takes hours and hours and hours. We
12 have legal review on this. We have legal technical
13 support on this. We have previous annexation agreements
14 to go by. And let me tell you one thing. This is a far
15 cry from any of the other annexation agreements. And I
16 researched them. And back to 2001, we didn't even have
17 an Annexation Agreement with Cannery Village. So this
18 has progressed immensely forward.

19 And you have it in front of you tonight.
20 You had ample time, as far as I am concerned, from when
21 you received it last night. It was a very important
22 issue. You knew it was going to be here tonight to
23 address. I am glad to have Mr. Marshall address the few
24 minor changes that were made with this document out

1 loud. And when we talk about this to be read in full,
2 what we are talking about is this will be read into
3 record in full, which it never has been done in the
4 past.

5 COUNCILMAN PRETTYMAN: Again --

6 MAYOR POST: So we have a motion on the
7 floor.

8 COUNCILMAN PRETTYMAN: Can I ask --

9 MAYOR POST: And we have a second.

10 COUNCILMAN PRETTYMAN: May I speak to your
11 comment?

12 MAYOR POST: You certainly may.

13 COUNCILMAN PRETTYMAN: Thank you. Thank you
14 very much. First of all, I don't know what you were
15 talking about in the previous time. But I still feel
16 that coming back to all of this, we don't even have our
17 Town Solicitor here tonight to guide us. That is
18 something that we pay him for. He is not here to guide
19 us. We have this here, that it's going to make a major
20 impact on our community.

21 And Mayor Post, I happen to -- I'm agreeing
22 with Councilwoman Hudson that two weeks is not asking
23 too much to give everyone here the ample time to go
24 through this, because there's other people here on this

1 Council that work. And I know that they probably didn't
2 get it until late in the evening when they got home from
3 work.

4 Yes, I went through it last evening. I went
5 through it this morning. Then I get a call. I get
6 another one. And I'm -- I was going through it. And
7 it's time for the meeting. So it does not give us the
8 ample time that you consider to push this through.

9 MAYOR POST: Well, first of all, I don't
10 care for your terminology, push. And second of all,
11 like I just said, you will be getting a verbal tutorial
12 tonight, if that is what is required. We are reading it
13 in full before it would be voted on, if it gets voted
14 on. And we have been in numerous conversations with
15 Mr. Brady today, as well as faxing the final document
16 for his review today and just got off the phone with
17 Mr. Brady at 6:30 this evening.

18 COUNCILWOMAN HUDSON: Mr. --

19 MAYOR POST: So we have a motion --

20 COUNCILWOMAN HUDSON: Mr. Mayor?

21 MAYOR POS: Yes.

22 COUNCILWOMAN HUDSON: You spoke twice.

23 MAYOR POST: Uh-huh.

24 COUNCILWOMAN HUDSON: Noble spoke twice.

1 MAYOR POST: Go for it.

2 COUNCILWOMAN HUDSON: I will speak twice.
3 Because things have been done in short order before does
4 not make them right. I took an oath of office to
5 proceed in the best interests of this town. I do not
6 believe it is in the best interest of this town to
7 proceed at this time. In the past there have been
8 mistakes made by the Town Council. Things have had to
9 been voted over and over. Paperwork has been had to be
10 done over.

11 This is not ample time to review this
12 contract. We need -- We deserve, each of the Town
13 Councilmen, the opportunity to read it and make our own
14 judgments. I was voted into office to make a judgment
15 and not just hand that decision-making power over to an
16 attorney or to anyone else. The attorney wasn't
17 elected. I was. And I believe that having ample
18 opportunity to read this, just asking for a two-week
19 delay so we can have ample opportunity to read, it is
20 very reasonable. And that is what I believe would be
21 expected of the residents of this town who elected us
22 into office. Thank you.

23 MAYOR POST: Okay. We have a motion to
24 table for two weeks and a second on that motion. All

1 right. Let's do a roll call vote to table this for two
2 weeks. Councilman Frey.

3 COUNCILMAN FREY: No.

4 MAYOR POST: Councilman Harris.

5 COUNCILMAN HARRIS: No.

6 MAYOR POST: Councilwoman Hudson.

7 COUNCILWOMAN HUDSON: Yes.

8 MAYOR POST: Councilman Prettyman.

9 COUNCILMAN PRETTYMAN: Yes.

10 MAYOR POST: Councilwoman Melson.

11 COUNCILWOMAN MELSON ABRAHAM: No.

12 MAYOR POST: Councilwoman Betts.

13 COUNCILWOMAN BETTS: No.

14 MAYOR POST: And Mayor, as myself, vote no.

15 Motion carried to not table for two weeks.

16 All right. We need an approval for the
17 agenda.

18 COUNCILMAN FREY: So moved.

19 MAYOR POST: We have a motion to approve the
20 agenda. Do we have a second?

21 COUNCILWOMAN BETTS: Second.

22 MAYOR POST: We have a motion and a second.

23 Any discussion?

24 COUNCILMAN PRETTYMAN: I abstain.

1 MAYOR POST: Okay. All in favor to approve
2 the agenda, say aye.

3 COUNCILMAN FREY: Aye.

4 COUNCILMAN HARRIS: Aye.

5 COUNCILWOMAN HUDSON: Aye.

6 COUNCILWOMAN MELSON ABRAHAM: Aye.

7 COUNCILWOMAN BETTS: Aye.

8 MAYOR POST: Aye. Opposed?

9 COUNCILMAN PRETTYMAN: Opposed.

10 MAYOR POST: Motion carried. Okay. We will
11 now move on to Old Business, which is Annexation Key
12 Ventures, LLC, for Tax Map and Parcel 2-35-21.00-44.00.
13 And I believe we have the Applicant here to speak on
14 behalf of this annexation.

15 COUNCILWOMAN HUDSON: Mr. Mayor, a point of
16 order. Before he speaks, we hired Debbie Pfeil to help
17 us make this recommendation. And back on March 14th she
18 said that the developer will be present the night of the
19 public hearing -- that was to be April 22nd -- to do a
20 presentation, and the public will be asked for comments.
21 That will close the public comment portion of it after
22 that public hearing. This developer did not give his
23 presentation on that night. I believe public comment is
24 closed. And he should not be allowed to speak, even

1 though we tabled the vote on the Annexation Agreement,
2 that we did not prolong or extend the public comment
3 period. And public comment ended April 2nd. Written
4 comment ended May 2nd. I believe --

5 MAYOR POST: And --

6 COUNCILWOMAN HUDSON: -- this is incorrect
7 for him to speak at this time.

8 MAYOR POST: Well, you're incorrect on that,
9 because the Applicant does speak during the annexation
10 process. And also, I want to go on record about the
11 time period for anyone in this town or in the
12 surrounding area to comment on the annexation of this
13 parcel. Not only was it open for people to do it on the
14 website, I know it was printed in numerous newspapers
15 about this public comment period. And I think, also for
16 the record, and the public should know that that within
17 the period of time cut-off, we received one letter, one
18 letter regarding this application. We did receive a
19 second one that was received after the time cut-off. So
20 of all the people in the Town of Milton and all the
21 people surrounding this town of this grave issue, we
22 received two, two. And that's not even counting --
23 really, technically, one in the period. And it was
24 someone we had heard from many times, as well as the

1 second letter, as well, who has publicly spoken and is
2 on record for coming to the meetings.

3 COUNCILWOMAN HUDSON: But they were
4 received --

5 MAYOR POST: No one else.

6 COUNCILWOMAN HUDSON: -- within the time
7 limits.

8 MAYOR POST: But this is the process. So
9 whenever land, a person is being annexed into the town,
10 the Applicant should be present and the Applicant should
11 speak. So we will move forward.

12 COUNCILWOMAN HUDSON: Will the public be
13 allowed to speak?

14 MAYOR POST: No. It's not public comment.
15 We've had the public hearing. Applicant, please --

16 MR. MARSHALL: Mayor, Vice Mayor, Council,
17 members --

18 MAYOR POST: Yes.

19 MR. MARSHALL: -- staff, my name is Doug
20 Marshall, and --

21 MAYOR POST: I'm not sure. Is that on? Is
22 that one alive over there?

23 7:46:52 UNKNOWN SPEAKER: (Unintelligible).

24 MAYOR POST: Well, go ahead.

1 MR. MARSHALL: Can you hear me? I'll speak
2 loud. My name is Douglas Marshall. I'm representing
3 the Applicant, Key Venture LLC. I'm with the firm
4 Hudson Jones Jaywork & Fisher, and I would like to
5 introduce the members of Key Venture who are here
6 tonight, so there will be a face behind this -- the
7 developer is probably not going to prefer to use 7:47:30
8 (unintelligible). These are just folks that put
9 together a large sum of money, mostly by borrowing, and
10 they are attempting to do something that we feel is in
11 the best interest of the Town and also a development
12 that's a viable investment for them.

13 We have filed our annexation application in
14 December and supplemented it January 7th, plus comments.
15 And we went through the period of time, the 90 days,
16 where the Annexation Committee reviewed it and came back
17 with a recommendation to annexation. I've read the
18 newspaper article 7:49:05 (unintelligible) public
19 comment. I have yet to hear one person in any of this
20 media, public hearing, say they were against the
21 annexation.

22 The recommendation came down from your
23 Annexation Committee to annex. It was their
24 interpretation it should be annexed 7:49:35

1 (unintelligible). When we filed our application, we
2 were anticipating doing something with the Town, as far
3 as with 15, 20 acres for the sewer plant and requested
4 7:49:55 (unintelligible) so that lost payments could be
5 made up 7:50:03 (unintelligible).

6 The Annexation Agreement, which you will
7 read tonight or will be read tonight, does the
8 following: Number one, it amends our annexation
9 petition for zoning in R-1 as opposed to R-2. Number
10 two, it 7:50:25 (unintelligible) the Town to consider
11 upgrade from R-1 to R-3 by going through the normal
12 procedure of the Planning Commission 7:50:40. Then we
13 will -- as an obligation on our part, not on your part,
14 an obligation on our part -- we will submit R-3 and hope
15 to come to an agreement where we can get the 20 acres
16 7:51:05 (unintelligible). If that does not work out, we
17 are in the town as R-1, as everyone requested. And we
18 will be more than happy to be in the town with R-1 or
19 R-3.

20 It seems to us, after working with this
21 since December 7:51:30 (unintelligible) that we have
22 offered and we would accept or not accept to be annexed
23 in, to consider 7:51:40 (unintelligible) so that we can
24 7:51:44 (unintelligible). Councilwoman Hudson?

1 COUNCILWOMAN HUDSON: Yes.

2 MR. MARSHALL: The reason for the documents
3 of this nature, of this type this evening, when
4 negotiations go on 7:52:18 (unintelligible). But the
5 changes have been made 7:52:26 (unintelligible) that
6 were requested by the 7:52:28 (unintelligible). There
7 was some talk earlier on about the fact that there was a
8 contract 7:52:47 (unintelligible). Well, this document
9 that we're going to read in its entirety tonight
10 replaces that 7:52:52 (unintelligible). But there will
11 be no other agreement other than 7:52:47
12 (unintelligible). But I think once you hear the
13 agreement and you ask a few questions 7:53:05
14 (unintelligible) that you like about anything and why
15 this change and why that change, I'll be glad to
16 explain. And I think at the end of that you'll be
17 satisfied 7:53:19 (unintelligible).

18 MAYOR POST: Does anybody have any questions
19 for the Applicant? Any questions for the Applicant?

20 COUNCILWOMAN HUDSON: I have a question
21 about the contract. It appears to me to be actually in
22 two sections. There's the development intentions under
23 Section A, and then --

24 MAYOR POST: What page?

1 COUNCILWOMAN HUDSON: Page one. Development
2 intentions, under Section A, so that's page one through
3 four. And then on page five, development intentions if
4 rezoned. My first question is: Is this considered one
5 entire contract by you?

6 COUNCILWOMAN BETTS: It's not a contract.

7 COUNCILMAN FREY: It's not a contract.

8 7:54:28 MR. MARSHALL: (Unintelligible).

9 COUNCILWOMAN HUDSON: One entire Annexation
10 Agreement?

11 MR. MARSHALL: Yes. And the obligation
12 under Section B is our obligation. It gives you the
13 opportunity to look at an R-3 with a transfer of the
14 acres for no consideration. The Annexation Agreement,
15 the way it is set up, if the -- if you accept this
16 agreement for annexation as R-1, then we would go ahead
17 and proceed with 7:55:03 (unintelligible) R-3. If it's
18 not your decision not to do that R-3, then the
19 Annexation Agreement, everything from B1 through 14 then
20 becomes null and void. The Annexation Agreement 7:55:13
21 (unintelligible).

22 MAYOR POST: The R-1.

23 MR. MARSHALL: Yes, the R-1.

24 COUNCILWOMAN HUDSON: Okay. So if we --

1 Just looking at page one, two, three, and four,
2 development intentions, 86 acres, R-1, 200 units, you
3 will pay the annexation fee and --

4 MR. MARSHALL: That's 7:55:38
5 (unintelligible).

6 MAYOR POST: At 8,000 per acre.

7 COUNCILWOMAN HUDSON: -- the Town does not
8 receive the 20 --

9 MAYOR POST: Correct.

10 COUNCILWOMAN HUDSON: -- acres for the sewer
11 plant.

12 MR. MARSHALL: This document --

13 COUNCILWOMAN HUDSON: On pages five through
14 nine, if we go with this, you get 66 acres at R-3 which
15 could be at least no less than 390 homes, without
16 deduction for water, streets, common areas, wetlands,
17 ponds, or any other condition or use, and the Town does
18 get 20 acres. So could we approve the A part, the first
19 four, and declare the B part null and void?

20 MAYOR POST: No.

21 MR. MARSHALL: The only thing -- the only
22 thing that you are agreeing to is to allow me to file
23 for the upgrade.

24 MAYOR POST: The upgrade.

1 MR. MARSHALL: 7:56:45 (unintelligible) that
2 decision later.

3 COUNCILMAN PRETTYMAN: So if we are agreeing
4 to A, then why can't we leave B out and then you file,
5 because the way it reads, you know --

6 MAYOR POST: But let me answer this,
7 Councilman. If you have read the other annexation
8 agreements -- and I would strongly encourage anybody
9 that wants to go in, now is the time to file for your
10 request, if you want read annexation agreements. The
11 majority of the agreements are done -- as a matter of
12 fact, this is a better one. It is a tighter one. It
13 covers more areas. It protects the Town better. You
14 may not believe it, but it is that way. The thing is is
15 the majority of the contracts -- the majority, not all
16 of them -- every one of them -- and not every one of
17 them, the majority of them, we will say -- says that
18 there's a clause in there that within 60 days or
19 30 days, they are going to reapply for higher density.
20 And pretty much all of them have received it. And
21 whether that happens or not, that is in our destiny.

22 However, you know, what is intriguing is
23 this is a better business opportunity for the Town. And
24 you can say yes or no. The other ones, what have we

1 done? We have exempted -- we've moved site plans for
2 developers. We have exempted them from impact fees.
3 We've paid for their infrastructure. (Single applause).
4 So with this one, isn't it interesting the Town is
5 getting something out of it? That's pretty intriguing.
6 My goodness, we don't want to make good business deals.
7 So it's very interesting.

8 And for anybody taking notes in the
9 audience, I want them to make sure they hear some things
10 loud and clear. And I'm going to go over this, try to
11 go over this briefly. But this is an important issue.

12 And on 06/28/01 we got an application from
13 Cannery Village to come into town, 147.5 acres, less
14 50 acres already in the town. During the Annexation
15 Agreement, they specifically requested what they wanted,
16 102 single detached, 78 single attached, 160 townhouses,
17 96 apartments, 60 live/work buildings, 28 fourplexes, 14
18 duplexes, 10.8 acres of commercial. That was in the
19 Annexation Agreement.

20 At the time of zoning, R-2 was amended to
21 R-1, possibly because there was the creation of a new
22 LPD in this town which the developer was writing. So
23 that's why they didn't want -- obviously, that's
24 probably why they backed down to R-1, because they knew

1 then they wanted to come in as R-1. But then they were
2 going to go -- but then they wanted the zoning changed
3 to an LPD. That's why it was being created. And in a
4 very short month period, a very nice new zoning was
5 created and approved in this town that benefitted the
6 developers immensely.

7 So like around 10/29/04, I think it was --
8 that, just one little thing, because, oh, we got site
9 plans. Site lines were changed. We got exemption of
10 different things coming into town.

11 On one rezoning change of 614 Federal
12 Street, we went from an R-1 to an R-3, which increased
13 that 27 units on 20 lots, which -- on 3.95 acres. Seven
14 units per acre were approved. Out of this whole Cannery
15 Village complex, we now have light industry LPD. We
16 have industrial LPD. We have R-1 LPD, all starting from
17 an R-2, going to an R-1. They all went into LPs,
18 industrial this and industrial that. And that's fine.
19 I mean this is business. This is the process.

20 06/2901, the Carey Trust came in,
21 170.25 acres; stated in the Annexation Agreement, 425
22 residential units, 8.5 acres for commercial, no change.
23 They didn't want to change zoning, which was
24 interesting, because they wanted agricultural. We don't

1 have agricultural, I don't believe, in the Town of
2 Milton. They wanted agricultural/residential. It was
3 zoned in as R-1, but changed to R-1 LPD, larger density.

4 12/09/04, Charles E. Turner, Jr. came to be
5 annexed in; Robino Properties, 7.05 acres. 44
6 residential units came to 6.3 units per acre without any
7 deductions, no deductions of streets, because we don't
8 own the streets, which is a little bizarre. I don't
9 even know if they have to have sidewalks in that
10 development. But it was approved. And it was zoned in
11 at R-3, zoned into the town tonight, tonight, zoned in
12 R-3 then. So there was no need to request changes.

13 On 06/08/05, James D. and Mary Beth Parker
14 came in and had three lots outside of town, .84 acres,
15 wanted a three-building for mini storage. C1, they
16 wanted, commercial. Well, they got it. They got
17 commercial one, and there was nothing wrong with that.

18 But no, we should bring everything in as
19 R-1, correct? I believe that's what everybody wants.
20 And maybe we that's what we should have written the
21 charter as.

22 07/14/05, James and Nancy White came in.
23 They wanted -- They have 76.05 acres, 7.91 acres of
24 wetland. Annexation Agreement, 370 single -- they want

1 single attached, single detached townhouses. Note
2 6.49 units per acre was being negotiated at one time.
3 And it wasn't even clear in the Annexation Agreement how
4 many commercial acres, but it's all calculated out. On
5 the Annexation Agreement, the request was R-3. It came
6 in as an R-1, with a 60-day condition for rezoning it,
7 R-1 of 37.04 acres and R-3, 25 acres with LPD overlay,
8 higher density. And guess what? They got the R-1 with
9 the 37.04 and R-3 for the 25 acres an LPD overlay.

10 Sue Raley came in -- I don't know what date
11 that was, couldn't find the front page of the Annexation
12 Agreement -- 9.6 acres, wanted R-3, got R-3, didn't need
13 to make any changes.

14 Now we are here tonight and have somebody
15 say 86.58. They wanted to change from the R-3 to go to
16 R-1 and considered the next stage. To me, make sure you
17 have the notes and you are writing them down, that you
18 have these facts, too.

19 Also, I just want to read another one, since
20 this is a hot topic tonight for a few people. This was
21 in the Washington Post. In the frenzy to build
22 subdivisions in Northern Virginia exurbs -- exurbs --
23 one of the nation's largest housing developers has
24 offered to write the small Fauquier County town of

1 Warrenton a \$22 million check, an unprecedented cash
2 donation, according to Virginia real estate specialists.
3 In exchange, Centrex of Dallas would get permission from
4 the county and town leaders to build a subdivision just
5 outside of Warrenton with nearly 300 luxury homes for
6 seniors, starting at 850,000. In this same article, in
7 Loudoun County, the developer Greenvest has offered to
8 spend 192 million on road improvements in exchange for
9 permission to build 15,000 homes near Dulles
10 International Airport. Tull Brothers, another
11 developer, plans to contribute 233 acres of parkland to
12 Prince William County so it can rezone rural land to
13 build 420 houses near Silver Lake.

14 So somebody might want to get some copies of
15 this, too, when they are taking notes, so they'll have
16 it for their notes that they're taking. So anyway, I
17 just want to get that information into the record so we
18 can move forward tonight.

19 MR. MARSHALL: I think the Mayor's point is
20 that additionally, the Annexation Agreement 8:05:01
21 (unintelligible). In this case the difference is that
22 we are asking for what the Town has expressed they want
23 us initially to come in R-1 and then make the decision
24 as to whether or not they 8:05:21 (unintelligible). So

1 we are happy to be 8:05:35 (unintelligible) either way.
2 So that is basically how I feel 8:05:41 (unintelligible)
3 the Annexation Agreement and negotiations with 8:05:48
4 (unintelligible) developer, as well. So that's why we
5 find ourselves here tonight 8:06:00 (unintelligible).

6 COUNCILWOMAN HUDSON: Are you going to read
7 it now?

8 MAYOR POST: It will be read, down -- yes.
9 We've got to --

10 COUNCILMAN HARRIS: I've got a question for
11 you. How are you doing this evening? Just skimming
12 over it really quickly, it's pretty clear you can pick
13 out the differences between the two contracts -- at the
14 two annexation agreements. One of the ones that I found
15 on page four of 11, other provisions, 8a, it says the
16 Town agrees to serve six individual lots owned by
17 Petitioner which are contiguous to the property to be
18 annexed which front on Cave Neck Road with Sewer & Water
19 hook-ups. Is the purpose of that to gain entrance to
20 this new development off of Cave Neck Road?

21 MR. MARSHALL: No. The annexed property
22 only takes 50-foot access to Cave Neck Road. Those
23 other six lots 8:07:00 (unintelligible), the developer
24 owns there are a part of the subdivision that was

1 already in existence. And rather than upset the people
2 that have houses there and also in response to some of
3 the comments about this development 8:07:16
4 (unintelligible). But we did request that the sewer
5 sustained impact fees 8:07:37 (unintelligible).

6 COUNCILMAN HARRIS: Okay. So is the answer
7 there will not be an entrance off of Cave Neck Road to
8 this development? It will be Sam Lucas Road?

9 MR. MARSHALL: Well, we don't know --

10 COUNCILMAN HARRIS: You don't know for sure.

11 MR. MARSHALL: -- where. That would be the
12 Planning Commission --

13 COUNCILWOMAN BETTS: Planning Commission.

14 COUNCILMAN HARRIS: Okay.

15 MR. MARSHALL: -- the highway department --

16 MAYOR POST: But you're not planning an
17 entrance off of 88?

18 MR. MARSHALL: I believe there should -- I
19 believe 8:08:5 (unintelligible) Cave Neck, over that
20 50-foot and as the main entrance Sam Lucas Road. And
21 that's --

22 MAYOR POST: That's something that --

23 MR. MARSHALL: We're a long way from --

24 MAYOR POST: -- DelDOT will have to --

1 right, that DelDOT regulates all that.

2 MR. MARSHALL: 8:08:20 (unintelligible).

3 MAYOR POST: And we -- right.

4 COUNCILWOMAN HUDSON: I have a question
5 about page seven, paragraph E. It says the Town will
6 consider rezoning -- that's will consider a rezoning of
7 all the property being sold and all the Petitioner's
8 remaining property and will zone Petitioner's remaining
9 property LPD or with some other zoning classification
10 agreed upon by the Petitioner and the Town of Milton,
11 which will permit the balance of the 86 acres to be
12 developed in a manner which will permit the construction
13 and sale of residential property and/or residential
14 units at the rate of six units per acre, which
15 residential property and/or units may be made up of a
16 combination of single family units, a combination of
17 duplexes, multi-family units, townhouses, and/or
18 condominiums, as well as any other uses, if any, which
19 other uses both the Petitioner and the Town agree would
20 be beneficial to the Town of Milton, the site plan to be
21 agreed upon between the Petitioner and the Town with the
22 attached Exhibit A being generally acceptable to the
23 petition.

24 The zoning classification and the physical

1 condition of Petitioner's remaining property must allow
2 said property to be developed at a rate of six units per
3 acre based on the entire 66 units -- i.e., 390 units
4 plus -- that any deduction for streets, common areas,
5 wetlands, ponds, or any other use or condition.

6 If this document is accepted as a whole,
7 this Annexation Agreement, is this, in fact, R-3 right
8 here?

9 MR. MARSHALL: No, not unless you all decide
10 tonight that R-1 8:10:14 (unintelligible) for R-3.

11 COUNCILWOMAN HUDSON: Then why is this even
12 in here?

13 MR. MARSHALL: Because 8:10:32
14 (unintelligible) of the developer's final plan, which
15 would be either quickly agreed on in this document. We
16 changed the document so that all that you are doing is
17 consider 8:10:46 (unintelligible). That was because of
18 the recommendation of the 8:10:53 (unintelligible).

19 COUNCILMAN HARRIS: Committee.

20 COUNCILMAN FREY: Committee.

21 MR. MARSHALL: 8:10:55 (unintelligible).

22 COUNCILMAN HARRIS: Committee, committee.

23 COUNCILWOMAN HUDSON: Then could you --

24 MR. MARSHALL: We wanted to see if it could

1 come in R-1 and then go back through the process.

2 COUNCILWOMAN HUDSON: Then could you change
3 these words, will to may? Will consider rezoning, will
4 consider permitting the balance of the 86 acres to be
5 developed in a manner which will permit, may allow said
6 property to be developed at a rate of six units per acre
7 based on the entire 66 acres?

8 MR. MARSHALL: Yes. I believe that's what
9 it, in fact, says.

10 COUNCILWOMAN HUDSON: No.

11 MR. MARSHALL: Will consider that, not that
12 you will --

13 COUNCILWOMAN HUDSON: It says: Will permit
14 and must allow said property to be developed.

15 MAYOR POST: But it's correct, because you
16 have that option. That's what you are taking into
17 consideration. And that's the next step. Tonight
18 is really the R-1. But in all the annexation
19 agreements we've received -- or like, again, I'll say
20 the majority -- they state what they want. If they
21 don't receive that, they have an opportunity to back out
22 of the Annexation Agreement.

23 This Annexation Agreement, to put it into
24 perspective, is a business deal with the Town and the

1 developer. The developer knows what it takes to make
2 the money, to build the development. They are not
3 coming here for their health, for the fun of it. They
4 are coming here to make money. Let's be honest.

5 And it's -- The Town can say we are
6 interested, or the Town can wash their hands and say
7 we're not interested. But they're telling the Town up
8 front -- which I like that concept, because don't waste
9 my time. If it's something we are not going -- we are
10 interested in, then move on to the next town. But the
11 bottom line, this is a business transaction. This is a
12 business deal. And if you read -- you know, these other
13 ones, they say the same thing. I think there was
14 60 days. There were several of them that were 60 days.
15 But they would come back in and apply for rezoning.

16 MR. MARSHALL: 8:12:50 (unintelligible)
17 tonight as R-1.

18 COUNCILWOMAN BETTS: That's it.

19 MR. MARSHALL: And that would be the end of
20 it.

21 MAYOR POST: But it gives the option of
22 considering the second part of it. And when they go to
23 reapply and if it doesn't make it, then you know, then
24 we are with R-1 and --

1 MR. MARSHALL: That's an opportunity for the
2 Town to get the 8:13:09 (unintelligible).

3 MAYOR POST: Right.

4 COUNCILWOMAN HUDSON: I agree that this is a
5 business venture. It's business for the Town, as well
6 as for the developers or the landowners. In making my
7 decision regarding annexation of the Key Ventures
8 property, I thoroughly reviewed the sales contract
9 between the Town of Milton and the Key Ventures Mayor
10 Post signed in September of 2006; the contract for sewer
11 services between the Town of Milton and Tidewater Mayor
12 Post signed on February 2007; the minutes of the
13 March 14, 2007 meeting of the Planning & Zoning
14 committee, in which they discussed their annexation
15 recommendation; the Town of Milton Annexation
16 Application Notebook concerning the Planning & Zoning
17 Committee's annexation recommendation; the Annexation
18 Agreement between the Town of Milton and Key Ventures;
19 the Town of Milton Zoning Ordinances; John Collier's
20 letter of April 28th to the Town regarding Key Ventures;
21 Cabe Associates' February 2, 2007 letter to the Town
22 regarding allowable density for the Key Ventures
23 project; Mayor Post's May 9th letter back to John
24 Collier; and two revised annexation agreements received

1 last night and briefly looked at this one today. I also
2 drove out to the property which has been proposed for
3 annexation and looked at it in context with the
4 surrounding neighborhood. I also listened carefully to
5 the citizens of Milton who offered their comments about
6 the annexation and proposed zoning at the April 2, 2007
7 Town Council meeting.

8 Unfortunately, despite the assurances of
9 Debbie Pfeil, a hired consultant with whom the Town has
10 contracted, to assist it with this annexation at the
11 March 4, 2007 meeting, the Planning & Zoning meeting,
12 the developer -- she said: The developer will be
13 present the night of the public hearing to do a
14 presentation. And it is only now that I'm hearing this.

15 Based upon my review of all this information
16 that I've received, I'm in favor of accepting the
17 unanimous recommendation of the three members of the
18 Planning & Zoning Commission appointed by Mayor Post to
19 evaluate the annexation of Key Ventures property. This
20 annexation was to annex the property at R-1 and only at
21 R-1.

22 Because it appears that this is not merely a
23 vote to annex the Key -- the Sam Lucas property, but an
24 affirmation of the Council's previous decision to

1 privatize the Town's wastewater treatment system, let me
2 also state that I'm in favor of privatization, but I do
3 not believe that we need to annex 66 acres of land with
4 R-3 zoning to achieve that goal.

5 Since Mayor Post stated in his May 7, 2007
6 letter to the editor of Cape Gazette that the Mayor and
7 the Council at this point have not obligated the Town to
8 anything because no vote has been taken, I will take
9 this opportunity to explain my opinions from a business
10 perspective.

11 According to the Key Ventures Annexation
12 Agreement, Key Ventures will sell Milton 20 acres of
13 land for \$10 if Milton will annex 66 acres of land with
14 an R-3 zoning. In turn, Tidewater will purchase 18 of
15 the 20 acres from Milton for \$1.8 million. Using only
16 those figures listed in the Annexation Agreement,
17 Tidewater contract, and Mayor Post's letter, we have
18 1,800,000 paid to the Town of Milton by the Tidewater
19 contract for 18 acres, minus \$532,640 that the Town of
20 Milton will waive all annexation fees. And that leaves
21 a subtotal of 1,263,360, which according to Mayor Post's
22 letter, would be a net gain to the Town. But Mr. Post
23 forgot to subtract those \$594,000 for the Tidewater
24 wastewater services agreement.

1 The Sam Lucas property is excluded from the
2 requirement to pay the Town of Milton 1,500 for new
3 annexation -- for new connection fees. That leaves only
4 a total --

5 MAYOR POST: That's 8:17:23
6 (unintelligible).

7 COUNCILWOMAN HUDSON: -- of 673,360.
8 Therefore, for Mayor Post to say that the Town of Milton
9 will receive a net gain for the town of 1,267,360 is
10 incorrect, when in fact the Town will receive a net gain
11 of only 673,360. However, Mayor Post would have us add
12 200,000 back to this figure as the value of the two
13 acres that the Town would be retaining. I do not know
14 how he arrived at this figure.

15 But according to the Annexation Agreement,
16 the Town agrees to give an easement back to Key Ventures
17 and its successors and assigns to use any portion of the
18 20 acres which does not interfere with the sewer plant
19 for the purpose of a shared water retention pond or
20 ponds to satisfy the needs of the Key Ventures' adjacent
21 property. Then I qualify the validity of adding this
22 200,000 back in as an asset. Why is the Town giving Key
23 Ventures this easement? Is it so that Key Ventures can
24 use this land to build more units?

1 We can see from the conceptual plan attached
2 to the Annexation Agreement that they have only sketched
3 out 358 of the no less than 390 units they requested --

4 MAYOR POST: 8:18:40 (unintelligible).

5 COUNCILWOMAN HUDSON: -- and it looks pretty
6 crowded. Who will be responsible for the maintenance of
7 the stormwater pond? The Town, as the landowner? In
8 Mr. Post's letter to the editor, he stated that the
9 grantee is requesting a total of 396 units. Again,
10 Mr. Post is incorrect.

11 The Key Ventures Annexation Agreement
12 states, in contingency number seven, paragraph E, that
13 the zoning classification and the physical condition of
14 Petitioner's remaining property must allow said property
15 to be developed at the rate of six units per acre based
16 on the entire 66 acres. That's 390-plus units without
17 any deduction for streets, common areas, ponds, or any
18 other use or conditions. That little plus sign after
19 the number 390 is very important. According to the
20 dictionary, that means it's not an absolute.

21 From Cabe Associates' May 2, 2007 letter to
22 Robin Davis, with an R-3 LPD zoning classification was
23 assigned to the property without deduction for wetlands,
24 543 units would be allowed, not a total of 396, as

1 Mr. Post stated.

2 Planning & Zoning Commissioner Michael
3 Filicko, in the annexation committee minutes dated
4 March 14, 2007, expressed concern that because of
5 Milton's lack of a tree ordinance, Key Ventures would
6 basically have carte blanche to destroy all growth trees
7 on the land. Similarly, in my opinion, according to the
8 Town Engineer, this Annexation Agreement would give Key
9 Ventures carte blanche with R-3 LPD, no wetlands, to
10 build 543 units, creating what Commissioner Virginia
11 Weeks stated would look like Downtown Rehoboth or vast
12 apartment houses.

13 Commissioner Michael Filicko also stated
14 that the Sam Lucas area had been an open drug market --
15 open air drug market. For example, an article in the
16 Milford Beacon stated -- June 6, 2003, described an
17 incident during which a Milton Police officer stopped a
18 24-year-old Lewes resident, quote, because he had just
19 come from Sam Lucas Road and there is a known drug
20 market in the area, unquote.

21 More recently, in a press release dated
22 March 7, 2007, the Delaware State police announced the
23 arrest of Letitia Allen, 30, of Sam Lucas Road, for
24 possession with intent to deliver cocaine, maintaining a

1 vehicle, tampering with physical evidence, possession of
2 drug paraphernalia, possession of marijuana, resisting
3 arrest, disregarding a police officer's signal,
4 unreasonable speed, aggressive driving, eight other
5 traffic offenses. And Allen was committed to Women's
6 Correctional Institution in lieu of 49,000 cash bond
7 pending a hearing.

8 Construction of -- for the conceptual plan
9 of at least 208 apartments and possibly 553 units all
10 together is not going to help this situation.

11 For these reasons, I totally agree with
12 Commissioner Louise Frey, Virginia Weeks, and Michael
13 Filicko in their recommendation for R-1 zoning. Quoting
14 from the minutes of the Planning & Zoning Commission
15 Annexation Committee March 14th meeting, Ginny Weeks
16 stated: I would say I would be comfortable voting for
17 this as R-1. Michael Filicko stated: Our
18 recommendation, if approved, is that it be zoned R-1.
19 It would improve the property values on Sam Lucas Road.
20 And Louise Frey concurred: I agree with Ginny and Mike.
21 It should only be R-1.

22 As a resident and as also a Town Councilman,
23 if this Annexation Agreement should be approved, I
24 believe that Milton would best be served if the land is

1 zoned R-1 and only R-1.

2 Going back to Mayor Post's position that
3 this annexation should be evaluated from a business
4 perspective, the way I see this deal is Milton gets
5 643,360, enough to buy a new home with a water view.
6 Key Ventures gets carte blanche to build 543 homes on
7 its 66 acres without any deduction for streets, common
8 areas, wetlands, ponds, or any other use or conditions.
9 Is it worth it? Is this a fair trade? Is having
10 Downtown Rehoboth or vast apartment houses on our
11 doorstep what we expect from smart growth? In my
12 opinion, this is a very poor business decision for
13 Milton. Key Ventures reaps enormous benefits while
14 Milton gets considerably less financially and is saddled
15 with the social and economic costs of a vast apartment
16 complex on its doorstep.

17 I agree that Milton should have a new sewer
18 plant or new sewer treatment service through
19 privatization. This is a given, since the Town Council
20 has already voted to approve and has signed a contract
21 with Tidewater. Some of you are probably thinking if we
22 don't adhere to the contract and zone the 66 acres R-3,
23 we won't get the 20 acres for the sewer plant. And
24 maybe you are right. But as Mayor Post said, in the

1 May 15, 2007 edition of the Cape Gazette, quote, quite
2 frankly, the contract with Tidewater is moving forward
3 with or without Sam Lucas Road, unquote.

4 The good news is that Mr. Esposito
5 anticipated this eventuality and prepared for it. It is
6 written into the sewer services agreement the Town
7 entered into with Tidewater. He fully prepared to -- he
8 is fully prepared to look for land elsewhere. At the
9 February 24, 2007 Town Council meeting, before the sewer
10 services contract was signed, he stated he had budgeted
11 to buy land from other landowners for an alternative
12 type treatment plant. And just two weeks ago at the
13 May 7th Town Council meeting, Mr. Esposito said not
14 once, but three times, that if our land deal fell
15 through, he could buy land on which to build a sewer
16 plant for our town. He even said it would not cost us
17 any more money, but it might delay construction. As to
18 any delay, it is expressly written in the Tidewater
19 contract if a threshold of new customers has not been
20 reached during the four-month due diligence period ends,
21 which ends June 24th, Tidewater will continue to operate
22 the existing plant until such time as a new plant can be
23 built economically.

24 Mr. Esposito expected to bring 1,500 new

1 customers on line during the four-month due diligence
2 period. However, on May 7, 2007, Mr. Esposito stated
3 that he had not signed up any developers. Mr. Esposito
4 in effect told us that the construction of the new sewer
5 plant is going to be delayed. Until the threshold of
6 new customers is met, the first shovel of dirt will not
7 be thrown for a new sewer treatment plant.

8 Certainly, Mr. Esposito can, during the time
9 he needs to bring -- to sign up new customers, look for
10 land to build a sewer plant for Milton, concurrently
11 look for new land and sign up customers. The lack of
12 new customers and the need to buy land can be handled
13 simultaneously. There is going to be a delay in the
14 construction of the new sewer plant regardless of
15 whether Milton approves the Key Ventures Annexation
16 Agreement. As I see it, since Tidewater can purchase
17 land elsewhere, the Town of Milton is not under the gun
18 to agree to the Key Ventures Annexation Agreement.

19 And back to Key Ventures, as Mayor Post
20 said, quote, the Mayor and Council at this time have not
21 obligated the Town to anything, because no vote has been
22 taken, unquote. I agree and I believe that we need to
23 consider what is in the best interests of the Town, only
24 as far as the development of the land on Sam Lucas Road

1 is considered.

2 Trading a total -- trading a potential 390
3 of the 340 units on Key Ventures land for a possible
4 643,360 net gain for this Town is, in my opinion, not
5 good business. Building between 390 or possibly up to
6 540 units on 66 acres of land in an area that was an
7 open area drug market is not good business. Building
8 360, maybe up to 540 units, mostly apartments in an area
9 consisting of single family homes is not good business,
10 nor does it do anything to enhance the Town of Milton.

11 Preserving the character and quality of life
12 of Milton is good business. It brings tourism dollars.
13 Preserving our property values by approving R-1 zoning
14 is good business. Preserving our open space by not
15 cramming apartment complexes into every nook and cranny
16 of 66 acres is good business. Approving R-1 zoning will
17 reduce the fear and risk of crime in that neighborhood,
18 and that, too, is good business. It encourages new
19 homeowners to make their homes in Milton.

20 Let me reiterate. I totally agree with
21 Commissioners Louise Frey, Virginia Weeks, and Michael
22 Filicko in their recommendation for R-1 zoning. I
23 believe Milton would best be served if the land was
24 zoned R-1 and only R-1.

1 I note that Key Ventures has amended its
2 annexation petition and is now requesting that the
3 property be annexed as R-1, based on the condition that
4 the Town will consider a change of zoning to R-3, large
5 parcel development, for approximately 66 plus or minus
6 acres.

7 But the language in B1 through B(15) of the
8 revised Annexation Agreement still incorporates the
9 words will and must concerning zoning of the property.
10 If the Town Council should even consider approving the
11 entire Key Ventures Annexation Agreement, which is
12 before us tonight, I ask that certain of the Annexation
13 Agreement contingencies be changed prior to approval to
14 remove the carte blanche that Key Ventures will have
15 under the agreement as presently written and to give the
16 Town of Milton more control over the number of units
17 that would be constructed.

18 In contingency B7e, delete the word will
19 wherever it appears and insert the word may so that the
20 paragraph reads as follows: The Town may consider
21 rezoning of all the property being sold and all of the
22 Petitioner's remaining property and may zone
23 Petitioner's remaining property LPD or with some other
24 classification agreed upon by the Petitioner and the

1 Town of Milton which may permit the balance of the 86
2 acre property to be developed in a manner which may
3 permit the construction and sale of residential property
4 and/or residential units at a rate of six units per
5 acre, which residential property and/or units may be
6 made up of a combination of single family units,
7 duplexes, multi-family units, townhouses, and/or
8 condominiums, as well as any other uses, if any, which
9 other uses both the Petitioner and the Town agree would
10 be beneficial to the Town of Milton, the site plan to be
11 agreed upon between the Petitioner and the Town with the
12 attached Exhibit A be generally acceptable to the Town
13 and Petitioner.

14 Further, in the same paragraph, delete in
15 its entirety zoning classification and the physical
16 condition of Petitioner's remaining property must allow
17 said property to be developed at the rate of six units
18 per acre based on the entire 66, i.e., 390-plus units,
19 without any deduction for streets, common areas,
20 wetlands, ponds, or any other use or conditions. Just
21 delete that entirely.

22 I would also like to see contingency B1(7)
23 actually deleted in its entirety. I see no reason to
24 give an easement back to Key Ventures and its successors

1 and assigns to use any portion of the 20 acres which
2 does not interfere with the town sewer plant for the
3 purpose of a shared water retention pond or ponds to
4 satisfy the drainage needs of Key Ventures' adjacent
5 property; or just accept A(1) through A(8) of the
6 revised Annexation Agreement while B1 through B(15) are
7 null and void, resulting in the best decision for
8 Milton, which is to accept the annexation of the
9 Planning & Zoning Committee and annex the property as
10 R-1 and only R-1.

11 I am almost finished.

12 COUNCILMAN FREY: I hope so.

13 COUNCILWOMAN HUDSON: The Tidewater contract
14 states that if the 18 acres is not available, the
15 contract may be renegotiated. And according to
16 Mr. Esposito, he is already prepared to do this. So
17 let's not sell our town short. If the 20 acres from Key
18 Ventures is only available if we annex and rezone this
19 remaining property R-3, let's walk away from this deal
20 and preserve the character and quality of life in
21 Milton. Thank you.

22 MAYOR POST: No, there's no public comment.
23 I'm sorry.

24 83149 UNKNOWN SPEAKER: (Unintelligible).

1 MAYOR POST: No public -- I know, but
2 there's no public comment tonight. I'm sorry.

3 COUNCILMAN FREY: Mr. Mayor, can we --

4 COUNCILWOMAN HUDSON: I --

5 COUNCILMAN FREY: -- read the agreement at
6 this time?

7 MAYOR POST: But just -- Just wait a minute.
8 I want to comment on just a couple of things here to get
9 the facts straight again. And that's one thing you have
10 to do constantly, I've noticed, in the last year.
11 You've got to read the Cape Gazette, see what's being
12 written about you, make sure the facts are correct that
13 go in the Cape Gazette. I'm not knocking the Cape
14 Gazette. But I'm talking about the letters to the
15 editor usually.

16 But the one thing I want to say is that
17 you're totally incorrect about what this Town would
18 profit from the land. And I don't know where you went
19 to school for math, Councilwoman Hudson. But I'm
20 telling you one thing; when I take \$1.8 million that we
21 are selling the land that we are purchasing for 560-some
22 thousand and you minus it, you're around 1.2 something
23 million. And you add 200,000 to that for the value of
24 the land of what we are getting per acre that we are

1 keeping, because we are only selling 18 acres, brings us
2 up to one point -- almost \$1.5 million. So I don't know
3 where the math that -- we are not exempting them from
4 impact fees or water. We are not excluding them from
5 sewer impact fees. And anytime they go up in the Town
6 of Milton, they pay the different rate. So I don't
7 quite understand where your math came in on that one.

8 Furthermore, if you don't see that as a
9 smart business deal, there's something wrong with this
10 picture. But I do want to state for the fact that we
11 are not exempting the impact fees. We are using the
12 impact fees technically to purchase the property of the
13 8,000 per acre, which is 500-some thousand dollars,
14 which technically, yes, we are purchasing the land for.
15 But it's kind of interesting that we already have a
16 sales agreement for 1.8 million. And I do think that
17 any realtor would even think that was pretty darn good.

18 COUNCILWOMAN HUDSON: It says here that --

19 MAYOR POST: But just --

20 COUNCILWOMAN HUDSON: -- TESI will pay to
21 Town 1,500 per new connection --

22 COUNCILWOMAN BETTS: We're not talking about
23 Tidewater.

24 COUNCILWOMAN HUDSON: -- after the date of

1 signing this agreement. Excluded from this new
2 annexation requirement --

3 MAYOR POST: No, I want her to read this.

4 COUNCILWOMAN HUDSON: -- is the Sam Lucas
5 Road property. We won't be getting over half a million
6 dollars in new connection fees from Tidewater for this
7 property. So here's the contract.

8 COUNCILWOMAN MELSON ABRAHAM: The issue
9 tonight is not Tidewater.

10 MAYOR POST: What page is that on?

11 COUNCILWOMAN HUDSON: The Tidewater
12 contract --

13 MAYOR POST: You know, and you are incorrect
14 on that one, too. But I'm not even --

15 COUNCILWOMAN HUDSON: Page five.

16 MAYOR POST: -- going there to night. I'm
17 not even addressing that contract. But you are
18 incorrect on that. We are getting the 1,500 for that,
19 but we are not even addressing that tonight. We are
20 addressing annexation tonight. That's what we are here
21 for this evening. We are not addressing even the houses
22 issue.

23 The thing is that they want 390 some houses.
24 And yes, Mr. Kerr, our engineer did figure it out. And

1 he figured it out with 16 point some acres of wetland,
2 as well. It does meet it.

3 The thing is is that is a consideration.
4 You know what? These people want to come in as R-1, the
5 same as anybody else has. And legally, I don't know
6 where we would stand even on that issue if it was
7 denied, because they have not produced anything in front
8 of us that is different than what has been presented in
9 the past and accepted in this town. They are coming in
10 as the largest density. If we want to be the fools and
11 turn it down with R-3, then that's the next step.

12 But right now, what we are addressing
13 tonight -- and it is just like other annexation
14 agreements are addressed -- they put what they want in
15 there. If they don't get it, they can walk away. If we
16 don't want it, we can walk away; quite simple.

17 So you know, I'm not even going on to all
18 that other stuff that you went on about, because first
19 of all, we are just dealing with the annexation tonight.
20 But I am very comfortable with the decisions I make for
21 this Town, representing the people of the Town of
22 Milton.

23 COUNCILWOMAN MELSON ABRAHAM: Mr. Mayor, do
24 we have to have the agreement read before we make a

1 motion of any kind?

2 MAYOR POST: We would -- first of all, we
3 would need a motion to annex and -- a motion to annex in
4 for R-1 zoning.

5 COUNCILWOMAN MELSON ABRAHAM: I would like
6 to make a motion to annex for R-1 zoning --

7 MAYOR POST: Annex in, have it zoned at R-1.

8 COUNCILWOMAN MELSON ABRAHAM: Annex in as
9 R-1 --

10 MAYOR POST: And I would read the --

11 COUNCILWOMAN MELSON ABRAHAM: -- Key
12 Ventures.

13 MAYOR POST: -- the lot number or whatever.

14 COUNCILWOMAN MELSON ABRAHAM: Sussex County
15 Map 2-35-21.00-44.00.

16 COUNCILWOMAN BETTS: Do you need a second?

17 MAYOR POST: Yes, we need a second.

18 COUNCILWOMAN BETTS: I'll second that
19 motion.

20 MAYOR POST: Okay. We have a motion and a
21 second to annex in as R-1 the Sam Lucas parcel. And
22 that parcel was on the agenda, is Tax Map Number
23 2-35-21.00-44.00. We need a motion and a second.

24 COUNCILMAN FREY: Common land.

1 COUNCILWOMAN HUDSON: Just one more --

2 COUNCILWOMAN MELSON ABRAHAM: Make a motion.

3 COUNCILWOMAN BETTS: Second.

4 MAYOR POST: We have a motion and a second.

5 COUNCILWOMAN BETTS: And a second.

6 MAYOR POST: And now we will open it for

7 discussion.

8 COUNCILWOMAN HUDSON: Okay. So I have a

9 question.

10 MAYOR POST: Sure.

11 COUNCILWOMAN HUDSON: While you're -- Are

12 you in effect agreeing to this entire contract?

13 MAYOR POST: We're taking it one step at a

14 time.

15 COUNCILWOMAN HUDSON: Okay.

16 MAYOR POST: The first thing is the motion

17 to -- You're not helping me. So we have a motion and a

18 second. We'll do a roll call vote. Councilman Frey.

19 COUNCILMAN FREY: Yes.

20 MAYOR POST: Councilman Harris.

21 COUNCILMAN HARRIS: Yes.

22 MAYOR POST: Councilwoman Melson.

23 COUNCILWOMAN MELSON ABRAHAM: Yes.

24 MAYOR POST: Oh, Councilwoman Hudson.

1 COUNCILWOMAN HUDSON: Yes.

2 MAYOR POST: Councilman Prettyman.

3 COUNCILMAN PRETTYMAN: Yes.

4 MAYOR POST: Councilwoman Betts.

5 COUNCILWOMAN BETTS: Yes.

6 MAYOR POST: And myself as Mayor votes yes.

7 Now we need to read the resolution and make a motion and
8 acceptance for signature for the resolution. Who has
9 the -- Okay. Okay.

10 Resolution 2007, a resolution to accept the
11 annexation report for the 86.58 plus, minus acres,
12 Parcel Number 2-35-21.00-44.00, located off Sam Lucas
13 Road and Cave Neck Road.

14 Whereas, Key Ventures, LLC, the owners of
15 the parcel, have applied to the Town of Milton to be
16 annexed; and whereas, the Town Council of the Town of
17 Milton received the application and has sent it to a
18 three-person committee from Planning & Zoning to review;
19 and whereas, the annexation report was received back
20 from that committee and incorporated into the record of
21 the April 6, 2007 town meeting; and whereas, the
22 annexation report and Annexation Agreement have been
23 reviewed by the Town Council; and whereas, it appears to
24 be in the best interest of the Town of Milton to annex

1 this parcel into the Town of Milton.

2 Now therefore, be it resolved by the Town
3 Council of the Town of Milton that at a vote at a public
4 meeting on May 17, 2007, that the 86.58 plus, minus
5 acres located off of Sam Lucas Road and Cave Neck Road
6 is hereby annexed into the Town of Milton with a zoning
7 classification of R-1.

8 Now we need a motion and a second.

9 COUNCILMAN FREY: I make a motion to accept
10 the resolution as read.

11 COUNCILMAN HARRIS: Second.

12 MAYOR POST: And for signature; amend the
13 motion to make a motion and for signing of the
14 resolution.

15 COUNCILMAN FREY: I make a motion to accept
16 the resolution as read and signing of the resolution.

17 COUNCILMAN HARRIS: I second that.

18 MAYOR POST: Okay. We have a motion and a
19 second. Any discussion? Councilman Frey.

20 COUNCILMAN FREY: Yes.

21 MAYOR POST: Councilman Harris.

22 COUNCILMAN HARRIS: Yes.

23 MAYOR POST: Councilwoman Hudson.

24 COUNCILWOMAN HUDSON: Yes.

1 MAYOR POST: Councilman Prettyman.

2 COUNCILMAN PRETTYMAN: Yes.

3 MAYOR POST: Councilwoman Melson.

4 COUNCILWOMAN MELSON ABRAHAM: Yes.

5 MAYOR POST: Councilwoman Betts.

6 COUNCILWOMAN BETTS: Yes.

7 MAYOR POST: And myself at Mayor, yes.

8 Motion carried to accept the resolution and for
9 signature.

10 Third, I need a motion to accept the
11 Annexation Agreement with approval for signature. We
12 will read it into record in its entirety.

13 You can. It's pretty long.

14 COUNCILMAN HARRIS: Annexation Agreement,
15 agreement, dated this blank day of blank, 2007, by and
16 between Key Ventures, LLC, a Delaware Limited Liability
17 Company, its successors or assigns, (hereinafter
18 referred to as Petitioner) and the Town of Milton, a
19 municipal corporation of the State of Delaware
20 (hereinafter referred to as Town).

21 Recitals: A, the Petitioner is the fee
22 simple owner of the Annexation Property (the property)
23 identified by Sussex County Tax Map 2-35-21.00-44.00
24 consisting of approximately 86.58 plus or minus acres

1 that are contiguous and adjacent to the present
2 boundaries of the Town under an Annexation Petition
3 filed with the Town on December 20, 2006 and as
4 Supplemental thereafter on January 8, 2007.

5 B. The property is located within the
6 annexation area and developing areas as defined by the
7 Town's Comprehensive Plan. This area is designated as
8 residential district.

9 C. The Petitioner is proposing to develop
10 the property in accordance with the Town's Zoning
11 Ordinances and the approved Comprehensive Plan and shall
12 adhere to zoning procedures according to the Charter and
13 Statutes.

14 D. Petitioner hereby agrees to amend his
15 annexation petition and request that the property be
16 annexed as R-1, based on the condition that the Town
17 will consider a change of zone to R-3, large parcel
18 development (LPD) for approximately 66.58 plus or minus
19 acres with the Petitioner deeding 20 acres to the Town
20 or their assigns if the rezoning and the site plan, as
21 set forth herein in B1 through B-14 under the conditions
22 set forth hereinafter, are approved.

23 Now therefore, if the property is annexed
24 into the Town and in consideration of the mutual

1 interests, covenants, agreements and undertakings set
2 forth herein, and the mutual promises and covenants here
3 in contained, the sufficiency of which is expressly
4 acknowledged, the Petitioner and the Town mutually agree
5 as follows:

6 A. Development Interests: One, Development
7 Interests --Development Intentions, I'm sorry. Number
8 one, the Town will annex the approximately 86.58 plus or
9 minus acres property with an R-1 zoning classification
10 with a minimum number of single family residential lots
11 of 200 unless Petitioner agrees to a lesser number.

12 Number two, the Petitioner may terminate
13 this Annexation Agreement and withdraw its application
14 for annexation if the property does not receive the R-1
15 zoning with a minimum of 200 or less if Petitioner
16 agrees to a lesser number of single family residential
17 lots for the 86.58 plus or minus acres, simultaneously
18 with the annexation into the Town.

19 Number two, Public Water and Sewer
20 Utilities: The property shall be required to utilize
21 Town of Milton water and sewer utilities when available
22 and all of the -- for all of the annexation property.

23 The Petitioner agrees that: a, Adequate
24 public sewer facilities are not available at this time,

1 but will become available within two years of the date
2 of this agreement.

3 b. Until adequate public sewer facilities
4 become available, no building permits will be issued for
5 development of the property unless Petitioner can
6 provide on-site septic and well or some other source of
7 sewer service and/or water for the unit or lot; however,
8 all applicable land use approvals can continue to be
9 obtained. When the property is developed, it shall hook
10 up to the Town's water and wastewater system.

11 c. The Petitioner shall pay to the Town the
12 current sewer impact --

13 MAYOR POST: The then.

14 COUNCILMAN HARRIS: Huh?

15 MAYOR POST: The then.

16 COUNCILMAN HARRIS: -- the then current
17 sewer impact fee, which currently is \$8,000 per EDU upon
18 issuance of a Certificate of Occupancy for an improved
19 unit and upon the issuance of a Certificate of Occupancy
20 for the improvement on any vacant lot.

21 d. The Petitioner shall pay to the Town the
22 then current water impact fee, which currently is \$1,450
23 EDU upon issuance of a Certificate of Occupancy for an
24 improved unit and upon the issuance of a Certificate of

1 Occupancy for the improvement on any vacant lot.

2 On-site construction. The Petitioner shall
3 be responsible for all on-site utility construction and
4 the costs associated therewith.

5 f. Off-site construction. The cost of
6 connecting the property to the Town's wastewater
7 collection system and public water distribution system
8 at the property line or on Petitioner's property shall
9 be paid by the Petitioner with those costs associated
10 with the off-site utility improvements required to serve
11 the property being paid by the Town.

12 g. Construction: All utility improvements
13 required to serve the property described above shall be
14 designated in accordance with --

15 MAYOR POST: Designed.

16 COUNCILMAN HARRIS: Thank you -- designed in
17 accordance with any applicable State, Federal, and local
18 standard specifications. All construction plans for
19 utility improvements shall be reviewed, improved, and
20 inspected by the Town. Notice to inspect shall be in
21 writing by Petitioner to the Town. Confirmation of the
22 inspection and of the results shall be presented by the
23 Town to the Petitioner. The Town's approvals shall be
24 granted only after notice from the Petitioner that the

1 improvements to the water and wastewater systems are
2 complete, and after the town has inspected the
3 improvements and accepted the improvements.

4 h. The Petitioner or the HOA shall obtain a
5 maintenance bond for the common open space and the
6 stormwater management on the property which shall be in
7 full force and effect for a period of one year following
8 the issuance of the last Certificate of Occupancy for
9 the property.

10 Three, Development Standards: a, The
11 Petitioner agrees that the property shall be designed
12 and developed in accordance with the Town of Milton
13 Municipal --

14 MAYOR POST: Designed and developed. Did
15 you say -- go ahead.

16 COUNCILMAN HARRIS: I don't know -- shall be
17 designed and developed in accordance with the Town of
18 Milton's Municipal Ordinances, Zoning Code, Building
19 Code, and Subdivision Ordinance Requirements. The Town
20 of Milton Planning & Zoning Commissions and Town Council
21 may require additional conditions as provided in the
22 Code. Following the annexation of the property, as R-1
23 and the rezoning of the property, the master plan under
24 the provisions of the R-3 LPD Overlay District, and the

1 preliminary and final site plans shall be processed and
2 considered in compliance with Town Ordinance and in
3 substantial compliance with the conceptual site plan as
4 described above and/or hereinafter.

5 b. The Petitioner agrees that the proposed
6 streets will be designed to Town specification and
7 deeded over to the Town until final inspection and
8 approval --

9 MAYOR POST: Upon, upon.

10 COUNCILMAN HARRIS: -- upon final inspection
11 and approval and that any proposed alleys located within
12 the property shall be privately owned and maintained by
13 the homeowners association (HOA).

14 c. The Petitioner agrees that the proposed
15 streetlights located within the property shall be
16 maintained by the town.

17 d. The Petitioner agrees to provide to the
18 Town a signed and notarized copy of the contract between
19 the Petitioner and the power company for the lighting
20 plan and the payment thereof.

21 e. The Petitioner agrees that, in the event
22 of any conflict between the terms of this agreement and
23 the Town Code, the provision of the Town Code shall be
24 governing.

1 f. The Petitioner shall require by
2 covenants to be recorded in the Sussex County Recorder
3 of Deeds that HOA be formed, that every unit or lot
4 owner be a member of the HOA and be assessed dues so
5 that the HOA shall maintain all common areas, including
6 stormwater management and amenities with the property.
7 Before the HOA is formed, the Petitioner's, successors
8 or assigns shall be responsible for maintaining all that
9 shall eventually become the HOA's responsibility.

10 Four, Annexation and Service Fees: The Town
11 and Petitioner recognize that the annexation of the
12 property will provide certain benefits to the Town in
13 the form of impact fees, permit fees, and local real
14 estate transfer tax revenues. The Petitioner shall pay
15 to the Town the annexation fees of \$8,000 per acre, all
16 annexation fees being paid upon approval of the final
17 subdivision site plan or a phase thereof. The
18 Petitioner further agrees that the water, sewer, and
19 trash fee assessed for each residential unit after the
20 issuance of the Certificate of Occupancy shall be the
21 amount adopted by Council by resolution for new
22 properties annexed after January 1, 2005.

23 Number five, Remedies and Enforcement: If
24 the Petitioner fails to fulfill the terms of the

1 agreement, the Town may suspend issuance of the building
2 permits and certificate of occupancy. The Town may also
3 implement the terms of the agreement by utilizing the
4 bond, if any. Either party may be entitled to an award
5 of reasonable attorney fees in any action at law or
6 equity brought to enforce this agreement.

7 MAYOR POST: Do you want me to read?

8 COUNCILMAN HARRIS: Yes.

9 MAYOR POST: Number six, Bond: Petitioner
10 shall put in escrow sufficient funds to provide a
11 performance bond or letter of credit in an amount
12 reasonable determined by the Town but based on actual
13 bids for work provided by the Petitioner relating to all
14 aspects of infrastructure development of the property to
15 be 125 percent of the cost of the project.

16 Seven, Vested Rights and Sunsetting: Any
17 final site plan approved for the property shall be
18 subject to being sunsetted by the Town if no substantial
19 construction has started 12 months after adequate public
20 facilities are available, and after receipt of notice of
21 permission to proceed with site work from the Town.

22 Eight, Other Provisions: a, the Town also
23 agrees to serve the six (6) individual lots owned by
24 Petitioner which are contiguous to the property to be

1 annexed and which front on Cave Neck Road, with sewer
2 and water hook-ups, should Petitioner so request.

3 b. Binding: It is mutually agreed by the
4 parties hereto that the terms of this agreement shall be
5 binding not only upon the parties hereto but also upon
6 their respective successors and assigns.

7 c. Applicable law: It is the intention of
8 the parties that all questions with respect to the
9 construction of this agreement and rights and
10 liabilities of the parties hereunder shall be determined
11 in accordance with the law of the State of Delaware.

12 d. Entire Agreement Future Documents: This
13 agreement embodies and constitutes the entire
14 understanding between the parties with respect to the
15 transactions contemplated herein, and all prior
16 contemporaneous agreements, understanding
17 representations and statements, oral or written, are
18 merged into this agreement.

19 e. Severability: If any term or provision
20 of this agreement is found to be invalid, void, or
21 unenforceable, the remaining terms and provisions of the
22 agreement shall continue in full force and effect if the
23 parties can amend this agreement so as to affect the
24 original intention of the parties to the satisfaction of

1 the Petitioner.

2 f. Amendments: Neither this agreement nor
3 any provision hereof may be waived, modified, amended,
4 discharged, or terminated except in writing and signed
5 by all parties.

6 g. Binding Effect: Except as otherwise
7 provided herein, this agreement shall run with and bind
8 the annexation property in perpetuity and shall inure to
9 the benefit of and be enforceable by the Petitioner and
10 the Town, and any of their respective legal
11 representatives, heirs, successors and assigns.
12 Petitioner may assign this agreement without action or
13 approval by the Town.

14 h. Recordation: This agreement will be
15 signed, notarized and may be recorded with the Sussex --

16 COUNCILMAN HARRIS: County.

17 MAYOR POST: -- Sussex County Recorder of
18 Deeds.

19 i. Condemnation: The Town agrees not to
20 condemn or otherwise take all or any portion of this
21 property by eminent domain for the purpose for locating
22 a sewer plant thereon or for the purpose of transferring
23 the same to another for that same purpose or any other
24 purpose related thereto.

1 B. Development Intentions If Rezoned: One,
2 within sixty (60) days of annexation, the Petitioner
3 shall apply for a change of zone to R-3 Large Parcel
4 Development (LPD), under the following terms and
5 conditions:

6 One, Property. Petitioner hereby agrees to
7 transfer and convey unto Town, and Town hereby agrees
8 accept from Petitioner for the, upon the terms and
9 conditions hereinafter set forth, the real property
10 consisting of 20 acres at the southerly end of
11 Petitioner property to be subdivided from Petitioner's
12 larger property which is located on the southeasterly
13 intersection of Cave Neck Road and Sam Lucas Road and
14 the Town of Milton and being part of the Tax Parcel
15 2-35-21.00-44.00 Broadkill Hundred, Sussex County,
16 Delaware, the general location of which is shown on the
17 attached plot (hereinafter sometimes referred to as the
18 property).

19 Two, Settlement. Settlement shall occur
20 thirty (30) days following the completion of all
21 contingencies or sooner, so long as Petitioner has
22 obtained final site plan approval for its intended use
23 (as defined in paragraph six below) and is satisfied
24 that all other approvals necessary to develop the

1 balance of Petitioner's property will be irrevocably
2 forthcoming but not later than December 31, 2007, unless
3 mutually extended in writing by both Petitioner and
4 Town.

5 Three. Transfer Taxes; Pro-Rated Charge.
6 Transfer taxes, which are currently three percent (3%),
7 shall be paid one-half by Town and one-half by
8 Petitioner, if applicable to this transfer of property.
9 Taxes, water, sewer, and other lienable charge imposed
10 by the State of Delaware, Sussex County, the Town of
11 Milton, or other political subdivision of the State of
12 Delaware shall be prorated at the time of settlement.
13 All other costs of settlement, including but not limited
14 to deed preparation, survey costs, and title insurance
15 premiums shall be paid by Town.

16 Four, Possession of the Property and Risk of
17 Loss. Subject to paragraph seven, possession of this
18 property shall be delivered by Petitioner to the Town at
19 the time of final settlement and the risk of loss shall
20 remain on the Petitioner until that time.

21 Five, Title. Petitioner shall deliver good,
22 marketable, fee simple title, insurable for both owners
23 and lenders coverage at regular rates by a reputable
24 title insurer duly licensed to issue title insurance in

1 the State of Delaware, free and clear of all liens and
2 encumbrances, except as specified herein and except as
3 to use and occupancy restrictions of public record which
4 are generally applicable to properties in the immediate
5 neighborhood of which the property is located, and
6 publicly recorded easements for public utilities or any
7 other easement which may be observed by an inspection of
8 the property but which do not interfere with the Town's
9 intended use. If Petitioner is unable to deliver such
10 title, the Town shall have the option of taking such
11 title as they -- title as the Petitioner can deliver or
12 being repaid all monies paid by Town on account of the
13 purchase price, as their sole and exclusively
14 remedy, and this part of agreement, B1 through B14,
15 shall become null and void.

16 Six. Contingencies. Town's required use of
17 the property being obtained herein is for construction
18 of a sewer plant to provide sewer service to the Town of
19 Milton, Delaware and to the remainder of Petitioner's
20 property as shown on Exhibit A. The intended use of the
21 remainder of Petitioner's property, on which this part
22 of the agreement, paragraph B1 through B14, is
23 contingent, is the development thereof as a residential
24 development of no less than three hundred ninety (390)

1 home sites, said use being heretofore and hereinafter
2 referred to as Petitioner's intended use. Based upon
3 initial investigation the Town and Petitioner believe
4 the remaining property will support at least three
5 hundred ninety (390) home sites. Town and Petitioner
6 will use their best efforts to take the necessary steps
7 to gain all necessary permits and approvals and hereby
8 agree to review a preliminary site plan, as the basis to
9 move forward to gain such permits and approvals.
10 Petitioner's obligation to proceed to settlement shall
11 be subject to the following condition precedent. Upon
12 the failure (as determined by Petitioner) of any such
13 condition precedent, Petitioner shall have the option of
14 waiving same and proceeding to settlement or of
15 declaring this part of the agreement, B1 through B14,
16 null and void. Both Petitioner and Town shall, after
17 the execution of this agreement, and at all times
18 thereafter, diligently and in good faith, proceed with
19 attempting to fulfill the conditions precedent to this
20 settlement may be achieved -- so that this settlement
21 may be achieved. The conditions precedent to this part
22 of the agreement, paragraphs B1 through B14, are as
23 follows to wit:

24 a. The land to be acquired by the Town will

1 be 20 acres located at the southerly end of said
2 property, with access from Sam Lucas Road, as shown on
3 the attached Exhibit A.

4 b. The Petitioner shall give or gift the
5 20 acres to the Town of Milton.

6 c. The Petitioner and the Town shall agree
7 upon the location of the sewer plant structures on the
8 20-acre site and method of buffering the sewer plan and
9 equipment that shall be employed by the buyer to protect
10 the remaining property of Petitioner.

11 d. Petitioner and Town acknowledge that the
12 property to be conveyed is encumbered by two mortgages
13 totaling approximately 3.26 million, which will have to
14 be released by the lenders in order for the Town to
15 acquire title to the property free of liens and
16 encumbrances, and therefore the Town shall annex the
17 entire 86 plus acres and credit and/or waive all
18 annexation fees for the annexed property to Petitioner,
19 to be used to pay those release fees, if any, or any
20 other development fees or costs, so that the Petitioner
21 does not have to come out of pocket in order to give or
22 gift the property to the Town. Petitioner shall make
23 reasonable attempts to obtain the amount of the required
24 release fees from both lenders with sixty (60) days of

1 the date of this agreement in order to confirm that the
2 Petitioner's ability to obtain a release fee from each
3 which is satisfactory to Petitioner. If Petitioner is
4 willing to obtain such satisfactory release fees,
5 Petitioner shall so notify Town, and part of this
6 agreement, paragraph B1 through B14, shall become null
7 and void.

8 COUNCILMAN HARRIS: e. The Town will
9 consider a rezoning of all of the property being sold
10 and all of Petitioner's remaining property, and will
11 zone Petitioner's remaining property LPD, or with some
12 other zoning classification agreed upon by the
13 Petitioner and the Town of Milton, which will permit the
14 balance of the 86 plus acre property to be developed in
15 a manner which will permit the construction and sale of
16 residential property and/or residential units at the
17 rate of six (6) units per acre, which residential
18 property and/or units may be made up of the combination
19 of single-family home, duplexes --

20 MAYOR POST: Units, single-family units.

21 COUNCILMAN HARRIS: -- family units,
22 duplexes, multi-family units, townhouses, and/or
23 condominiums, as well as any other uses, if any, which
24 other uses both the Petitioner and the Town agree would

1 be beneficial to the Town of Milton, the site plan to be
2 agreed upon between the Petitioner and the Town, with
3 the attached Exhibit A being generally acceptable to
4 Town and the Petitioner. The zoning classification and
5 the physical condition of Petitioner's remaining
6 property must allow said property to be developed at a
7 rate of six (6) units per acre based on the entire 66
8 plus acres, i.e., 390 units plus, without any deduction
9 for streets, common areas, wetlands, ponds, or any other
10 use or conditions. The Town will provide sewer and
11 water service to the balance of Petitioner's land, not
12 being given or gifted to the Town, for use as a sewer
13 plant, at the rate of six (6) unit per acre and shall
14 reserve that capacity for sewer and water for the sole
15 use of the Petitioner or its successors or assigns for
16 the balance of the Petitioner's land. Petitioner shall
17 pay all sewer and water impact fees and all hookup fees
18 at the same cost and in the same manner as provided for
19 all other residents or property owners of the Town of
20 Milton, which the Town of Milton agrees is at the time
21 of the issuance of building permits for the structure or
22 structures to be served. Those reserve sewer and water
23 hookups shall be available for use by the Petitioner at
24 a time that the Petitioner so chooses.

1 f. It is anticipated that the sewer plant
2 will be built online within two (2) years from the date
3 of this agreement.

4 g. The Town also agrees to serve the six
5 (6) individual lots owned by the Petitioner which are
6 contiguous to the property to be annexed and which front
7 on Cave Neck Road, with sewer and water hookups, should
8 Petitioner so request.

9 h. The Town agrees that the zoning
10 classification and the use of the property, as
11 contemplated herein do not conflict with the
12 Comprehensive Plan of the Town of Milton subdivision
13 approvals as set forth herein.

14 i. The Town agrees to give an easement back
15 to the Petitioner and their successors and assigns, if
16 necessary in the sole discretion of the Petitioner, to
17 use any portion of the property being sold hereunder,
18 which does not interfere with the Town's use of the
19 property as a sewer plant, for the purpose of a shared
20 water retention pond or ponds to satisfy the drainage
21 needs of the Petitioner's adjacent property.

22 j. The Town agrees to cooperate with the
23 Petitioner and the State of Delaware and its agencies
24 and Sussex County, in promoting the anticipated use of

1 the balance of Petitioner's land at the PLUS review and
2 otherwise and to provide, for the purpose of this
3 review, a survey of the Town of Milton utilities that
4 show that the Town can now, or at some time the new
5 sewer plant contemplates herein comes on line, provide
6 the balance of Petitioner's land was sufficient water,
7 sewer, and other utility services to support the
8 anticipated project.

9 k. The rezoning and subdivision shall be
10 completed simultaneously and has a --

11 MAYOR POST: And shall be.

12 COUNCILMAN HARRIS: -- and shall be
13 contingent one upon the other so the Petitioner and the
14 Town shall both agree as to the final development plan
15 for the balance of Petitioner's property to be annexed
16 into the Town of Milton prior to the settlement
17 hereunder.

18 Seven, Possession Prior to Settlement. Town
19 shall have possession of the subject lands and premises
20 on the date of the settlement; expressly provided,
21 however, Town may enter the property early to conduct
22 whatever engineering and similar studies that must be
23 done in order to achieve the Town's intended use and to
24 achieve actual settlement. Town agrees to return the

1 land to its normal state to the extent that the same is
2 in any way disrupted by such early entry for such
3 engineering and testing. If the Petitioner farms the
4 land or leases the land to other farm -- to others to
5 farm, Petitioner shall make arrangements that the Town
6 may so enter early for said engineering and testing; and
7 further, Petitioner shall arrange that any lease shall
8 terminate on or before the date of the actual
9 settlement. Risk of loss shall remain with the
10 Petitioner until actual settlement. The Town has agreed
11 not to condemn or otherwise take the property by eminent
12 domain for the purpose of locating a sewer plant thereon
13 or for the purpose of transferring that same for that
14 same purpose, but in the event of condemnation by an
15 entity other than the Town, prior to settlement of all
16 of the lands herein to be transferred to the Town, as
17 well as the remaining land of the Petitioner or of so
18 much of the land so as to unreasonably interfere with
19 the Town's intended use or the Petitioner's intended
20 use, then Town and Petitioner will both try to agree to
21 the waiving of said lands condemned for a proportionate
22 receipt of the condemnation proceeds; or if they cannot
23 agree or declaration -- declaring this contract null and
24 void by either Town or Petitioner, in which case Town

1 shall receive back all monies paid by Town unto
2 Petitioner on account of the purchase price, as Town's
3 sole and exclude remedy and Petitioner shall receive the
4 full condemnation award. In the event of a partial
5 condemnation of the properties and/or Petitioner's --

6 MAYOR POST: Premises.

7 COUNCILMAN HARRIS: -- premises and/or
8 Petitioner's additional land of a degree that will not
9 unreasonably interfere with Town's intended use or
10 Petitioner's intended use, then the amount of the money
11 realized in said condemnation shall be granted to the
12 Petitioner and the parties shall proceed to the
13 settlement, but only if the Petitioner is satisfied with
14 the condemnation award.

15 Eight, Town's Default. If Town shall, for
16 some reason not excused hereunder, fail or refuse to
17 perform its obligation to the Petitioner, all rights and
18 obligations under this part of the agreement, paragraph
19 B1 through B14 shall cease and terminate and the entire
20 86 plus or minus acre property shall remain annexed with
21 its R-1 zoning classification as set forth in paragraph
22 A1 through A8.

23 Nine, Petitioner's Default. If the
24 Petitioner shall, for some reason not excused hereunder,

1 fail or refuse to perform his obligation to Town, all
2 rights and obligations under this part of the agreement,
3 paragraph B1 through B14, shall cease and terminate and
4 the entire 86 plus or minus acre property shall remain
5 annexed with its R-1 zoning classification as set forth
6 in paragraph A1 through A8.

7 MAYOR POST: Ten, Petitioner's
8 Representations and Warranties. To induce Town to enter
9 into this part of the agreement, paragraph B1 through
10 B14, Petitioner represents and warrants to Town as
11 follows, each and all of which representations and
12 warranties shall be true and correct as of the date
13 hereof and as of the date of settlement, as herein
14 defined, unless otherwise specified below:

15 a. Petitioner has no knowledge of any
16 pending or threatening condemnation or similar
17 proceeding affecting the property or any portion
18 thereof, nor has Petitioner knowledge that any such
19 action is presently contemplated.

20 b. Petitioner has no knowledge, information
21 or belief of any litigation, governmental proceedings,
22 judgment, cause of action, special assessment or charges
23 pending, threatened against, or related to the property
24 or any portion thereof, or the Petitioner, with respect

1 to the property or any portion thereof.

2 c. To the best of Petitioner's knowledge,
3 information, and belief, the property is free of
4 hazardous waste and toxic substance contamination, and
5 Petitioner has never used, or permitted others to use,
6 the property or any portion thereof for the storage or
7 disposal of any oil, hazardous wastes, or other toxic
8 substance.

9 d. To the best of Petitioner's knowledge,
10 information, and belief, the property has not been used
11 for military or industrial use.

12 e. There are no persons with any rights to
13 occupy or use the property as a tenant other than the
14 current year-to-year farm lease whose lease -- or lessee
15 whose lease may be terminated by giving the farm tenant
16 the required statutory notice.

17 f. Each and all of the above
18 representations and warranties shall be true and correct
19 as of the date hereof and as of the date of settlement,
20 as herein defined, but shall not survive settlement.

21 11. Use of Gender and Number. The singular
22 of any word pay denote two or more, the plural one
23 alone, and the words of one gender may denote another
24 gender whenever appropriate under the actual

1 circumstances.

2 12. Succession. This part of the
3 agreement, paragraph B1 through B14, shall benefit and
4 bind the parties hereto, their respective successors and
5 assigns.

6 13. Assignment. This part of the
7 agreement, paragraph B1 through B14, may not be assigned
8 by Town without the consent, in writing, of Petitioner.

9 14. Entire Understanding of the Parties.
10 This part of the agreement, paragraph B1 through B14,
11 constitutes the entire agreement and understanding
12 between the parties hereto relating to the transfer of a
13 portion of the property and it supercedes all prior or
14 other agreements and representations in connection with
15 the transfer of a portion of the property and this
16 portion of the agreement, paragraph B1 through B14, may
17 not be changed orally, but only by an agreement in
18 writing and signed by the party against whom enforcement
19 of any waiver, change, modification, or discharge is
20 sought.

21 And then the last page is the signature
22 page.

23 COUNCILMAN HARRIS: And two map attachments.

24 COUNCILMAN FREY: I would like to make a

1 motion to accept the resolution and sign it as read.

2 COUNCILMAN HARRIS: With two map
3 attachments.

4 COUNCILMAN FREY: Or the agreement.

5 MAYOR POST: And again, then there's two --
6 with the two maps attached. So say that motion again,
7 because we need a motion to annex the agreement with
8 approval for signature.

9 COUNCILMAN FREY: I would like to make a
10 motion to accept and sign the agreement as read.

11 MAYOR POST: With attachments.

12 COUNCILMAN FREY: With attachments.

13 MAYOR POST: Do we have a second?

14 COUNCILWOMAN BETTS: Second.

15 MAYOR POST: Okay. We have a motion and a
16 second. Any discussion?

17 MR. MARSHALL: Mr. Mayor, if I may, there is
18 one typographical on page seven, at the bottom of the
19 page regarding 9:09:42 (unintelligible).

20 MAYOR POST: Wait. Seven E?

21 MR. MARSHALL: At the bottom, the next to
22 the last sentence, the next to the last line. The
23 9:09:56 (unintelligible) it should say Certificate of
24 Occupancy 9:10:08 (unintelligible).

1 MAYOR POST: So the correction, Doug, would
2 be building permits, two words, changed to Certificate
3 of Occupancy?

4 9:10:41 MR. MARSHALL: (Unintelligible).

5 MAYOR POST: So instead, occupancy,
6 Certificate of Occupancy, so we'll need an amendment to
7 the motion that is on --

8 COUNCILMAN HARRIS: For page seven.

9 MAYOR POST: -- for page seven.

10 COUNCILWOMAN BETTS: I make a motion to
11 amend on page seven from building --

12 MAYOR POST: No, Councilman Frey has to
13 amend his motion.

14 COUNCILMAN FREY: I'll make the amendment,
15 Mr. Mayor, from building permits to a Certificate of
16 Occupancy.

17 MAYOR POST: On which page?

18 COUNCILMAN FREY: On page seven, letter E.

19 MAYOR POST: Okay. Second? Do you still
20 second it, Councilwoman --

21 COUNCILWOMAN BETTS: Yes, I'll second it.

22 MAYOR POST: Okay. Thank you. Any
23 discussion?

24 COUNCILWOMAN HUDSON: Mr. Marshall, just one

1 very short question.

2 MR. MARSHALL: Yes, ma'am.

3 COUNCILWOMAN HUDSON: If we agree to pass or
4 agree to accept this Annexation Agreement, are
5 paragraphs B1 through B15 binding on this Town at this
6 time?

7 MR. MARSHALL: They are only binding in the
8 sense that we propose 9:12:05 (unintelligible). And
9 even if we refuse to do that --

10 COUNCILWOMAN HUDSON: Okay.

11 MR. MARSHALL: -- Council 9:12:19
12 (unintelligible).

13 COUNCILWOMAN HUDSON: Okay.

14 COUNCILMAN HARRIS: One through eight?

15 MAYOR POST: Right.

16 COUNCILWOMAN HUDSON: Okay. Thank you.

17 MAYOR POST: Okay. We will do a roll call
18 vote. Councilman Frey.

19 COUNCILMAN FREY: Yes.

20 MAYOR POST: Councilman Harris.

21 COUNCILMAN HARRIS: Yes. Councilwoman
22 Hudson.

23 COUNCILWOMAN HUDSON: Yes.

24 MAYOR POST: Councilman Prettyman.

1 COUNCILMAN PRETTYMAN: Yes.

2 MAYOR POST: Councilwoman Melson -- Abraham.

3 COUNCILWOMAN MELSON ABRAHAM: Yes.

4 MAYOR POST: Councilwoman Betts.

5 COUNCILWOMAN BETTS: Yes.

6 MAYOR POST: And myself votes yes as Mayor.

7 This motion is carried. Okay. Now we need a motion to
8 close this meeting.

9 COUNCILMAN PRETTYMAN: I make a motion to
10 adjourn.

11 MAYOR POST: Okay.

12 COUNCILWOMAN MELSON ABRAHAM: Second.

13 MAYOR POST: Okay. I have a motion and a
14 second. All in favor, say aye.

15 COUNCILMAN FREY: Aye.

16 COUNCILMAN HARRIS: Aye.

17 COUNCILWOMAN HUDSON: Aye.

18 COUNCILMAN PRETTYMAN: Aye.

19 COUNCILWOMAN MELSON ABRAHAM: Aye.

20 COUNCILWOMAN BETTS: Aye.

21 MAYOR POST: Aye.

22

23

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1 State of Delaware.)
2 Kent County)

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5 CERTIFICATE OF REPORTER

6 I, Cheryl A. Anthony, Delaware Certified Shorthand
7 Reporter and Notary Public, do hereby certify that the
8 foregoing record, pages 1 to 84 inclusive, is a true and
9 accurate transcript of my stenographic notes, taken to
10 the best of my ability via audio recording, from the
11 hearing taped on May 17, 2007, in the above-captioned
12 matter.

13

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and seal this ____ day of _____ 2007.

16

17

18

19

20 _____
Cheryl A. Anthony
21 Delaware CSR
Certification No. 107-PS
22 (Permanent Certification)

23

24